

REMARKS/ARGUMENTS

Applicants have carefully reviewed the Office Action dated October 25, 2004, regarding the above-referenced patent application. Currently claims 60-67 are pending in the application, wherein all claims have been rejected. Claims 60 and 63-65 are amended with this response. Favorable consideration of the above amendments and following remarks submitted in view of the rejections is requested.

Claims 60 and 65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,663,652. Applicants have enclosed a terminal disclaimer in compliance with 37 C.F.R. §1.321(c) with this response in order to obviate the double patenting rejection. In doing so, Applicants take no position on the merits of such a rejection.

Claims 60-67 stand rejected under 35 U.S.C. §102(e) as being anticipated by Barbut et al., U.S. Patent No. 5,769,816 (hereinafter Barbut). The Examiner asserts Barbut discloses, in Fig. 1, all the limitations of the present invention as recited in claims 60-67. Applicants respectfully traverse this rejection.

Claim 60 has been amended to include the limitation found in previously presented claim 63 that the distal end of the second sheath has a rounded profile. Applicants assert Barbut at least fails to show this limitation of claim 60. Barbut seems to teach a socket 34 disposed at the distal end of the insertion tube 20. It is apparent from Fig. 1 that the socket 34 abuts and is secured to the distal end of the insertion tube 20. Neither the socket 34 nor the distal end of the insertion tube 20 includes a rounded profile as currently claimed.

Applicants assert that for at least these reasons, Barbut fails to anticipate the current invention as claimed in claim 60. Therefore, claim 60 is believed to be in condition for allowance. Claims 61-63 depend from claim 60 and add significant additional elements. For the reasons stated above, these claims are believed to be in condition for allowance.

Claim 64 is directed to a method for removing a restriction in a blood vessel including "inserting and advancing the retrieval device independent of the emboli capturing device." Applicants assert Barbut fails to teach the method as recited in claim 64. Therefore, Applicants believe claim 64 is in condition for allowance.

The blood filter device 10 taught in Barbut includes an umbrella frame 30 comprising a plurality of arms 32. See column 7, lines 63-64. The arms are welded to socket 34, which in turn is bonded to the insertion tube 20. See column 8, lines 1-3. Therefore, it is apparent that the blood filter device 10 is structurally connected to the insertion tube 20 by known bonding techniques. Because the blood filter device 10 is connected to the insertion tube 20, advancing the insertion tube 20 necessarily requires the advancement of the blood filter device 10. Thus, the insertion tube 20 may not be advanced independent of the blood filter device 10, as currently claimed. For at least this reason, Applicants assert claim 64 is not anticipated by Barbut, and claim 64 is in condition for allowance.

Claim 65 recites, "the second sheath is configured to move independent of the expandable emboli capturing device." Applicants assert, in order to anticipate, the invention must be shown in as complete detail as is contained in the claim and the elements must be arranged with all the structural limitations provided in the claim. See *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989); *Lindemann Maschinenfabrik v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). Barbut fails such an evaluation.

As stated above, the blood filter device 10 taught in Barbut is connected to the insertion tube 20 using known bonding techniques. Therefore, Barbut at least fails to teach the structural limitation of the current claim that the second sheath (corresponding to the insertion tube 20 of Barbut) is configured to move independent of the expandable emboli capturing device (corresponding to the blood filter device 10 of Barbut). Since the blood filter device 10 is bonded to the insertion tube 20, movement of the insertion tube 20 necessarily translates to movement of the blood filter device 10, thus the second sheath is not configured to move independent of the expandable emboli capturing device.

For at least the above reasons, Applicants believe claim 65 is in condition for allowance. Claims 66 and 67 depend from claim 65 and add significant additional elements. Therefore, these claims are also believed to be in condition for allowance.

Reexamination and reconsideration are respectfully requested. It is submitted that all pending claims, namely claims 60-67, are currently in condition for allowance.

Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at 612.677.9050.

Respectfully submitted,

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By their Attorney,

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